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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.3.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MRS.JUSTICE CHITRA VENKATARAMAN

T.C.(A).No.66 of 2004

Commissioner of Income Tax-VII
Chennai. .. Appellant

Vs.

M/s.Sharadha Industries
Chennai - 600 081. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 26.6.2003 made in ITA No.387/Mds/1996 for the assessment year 1993-94. against the order of the Commissioner of Income Tax (Appeals) VI Madras dated 4.12.95 in IT/97/Appl No.ITA No. 27/95-96/city Ward IV, Madras.

For Appellant : Mrs.Pushya Sitaraman
Sr.Standing Counsel (IT)

For Respondent : Mr.T.N.Seetharaman

J U D G M E N T

(Delivered by P.D. DINAKARAN, J.)

This appeal is directed against the order of the Income Tax Appellate Tribunal dated 26.6.2003 made in ITA No.387/Mds/1996 for the assessment year 1993-94, raising the following substantial question of law:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that interest arising out of the Bank Deposit is to be included under the head 'profit and gains' of the business for the purpose of computing deduction under Section 80HHC of the Act?"

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2.1. During the course of the assessment proceedings for the assessment year 1993-94, the assessee claimed a sum of Rs.7,90,799/- being the total interest received by the assessee on deposits made to get overdraft and other facilities for their export business. The Assessing Officer excluded the interest income derived out of bank deposits from the profits and gains of the business or profession.

2.2. On appeal, at the instance of the assessee, the Commissioner of Income Tax (Appeals) held that the interest earned should be treated as part of business profit. On appeal by the Revenue, the Tribunal, finding that the assessee was able to establish that the interest receipts were from the export business activity of the assessee firm, held the issue in favour of the assessee. Hence the present appeal raising the question of law referred to above.

3. Heard Mrs.Pusha Sitaraman, learned Senior Standing Counsel for the Revenue and Mr.T.N.Seetharaman, learned counsel for the respondent/assessee.

4. The learned Standing counsel for the Revenue submitted that the issue involved in this appeal is answered in favour of the Revenue by the decision of this Court in CIT v. V.CHINNAPANDI, [2006] 282 ITR 389. Though it was submitted by Mr.T.N.Seetharaman, learned counsel for the assessee that the said decision is not applicable to the facts of the case, on going through the law laid down as under in the said decision, we are convinced that the ratio laid down in the said decision is applicable to the facts of the case on hand in all fours:

> "Section 80HHC of the Income-tax Act, 1961, stipulates that “profits of the business” for the purpose of section 80HHC of the Act mean the profits of the business as computed under the head “Profits and gains of business or profession”. While computing such profits under the head “Profits and gains of business or profession”, if any receipt by way of brokerage, commission, interest, rent charges or any other receipt of a similar nature included in such profits, the same has to be reduced by 90 per cent from the profits computed as aforesaid. The deductions to be made are from the amount of profits so computed and not from the amount computed under any other head of income of that assessee. No reference to net interest is mentioned in clause (baa) of the Explanation to section 80HHC(4B). Section 80HHC stipulates a deduction in respect of export profits. Instead of enjoining the Assessing Officer to compute such export profits from out of the consolidated

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amount of income of the assessee, which may involve income by way of interest, rent, commission, etc., the Legislature has provided a simple procedure under which 90 per cent. of the receipts such as interest, rent, commission, brokerage, etc., shall be excluded as profits not attributable to exports. The intention is therefore clear that there should be no attempt to deduct any expenditure from the receipts however related such expenditure may be to the receipts. It is in this sense that the expression "receipt by way of" has been used in the section and not "income" of that nature. Ninety per cent. that is deductible for the claim under section 80HHC of the Act is from the gross interest received by the assessee and the amount of interest paid by the assessee should not be deducted therefrom."

(emphasis supplied)

5. In view of the above well settled law, we find that the first appellate authority as well as the Tribunal erred in holding that interest arising out of the bank deposit is to be included under the head 'profit and gains' of the business for the purpose of computing deduction under Section 80HHC of the Act. This tax case is allowed. No costs.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Assistant Registrar,
Income Tax Appellate Tribunal, Rajaji Bhavan,
III Floor Besant Nagar, Madras Bench "B", Chennai.90

2.The Secretary, Central Board
of Direct Taxes, New Delhi.

3.The Commissioner of Income
Tax (Appeals)-VI, Chennai.

4.The Commissioner of
Income Tax, Tamil Nadu-IV,
Chennai.

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5.The Income Tax Officer
City Ward IV (10) Madras
Chennai-6.

+ 1 cc to Pushya Sitaraman, Senior Standing Counsel for IT Cases SR 13799

+ 1 cc to Mr. T. N. Seetharaman, Advocate SR No. 13914

HPR(CO)
SR/16.3.2007

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